

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

WILLIE McNAIR,

Plaintiff,

v.

**RICHARD ALLEN, Commissioner,
Alabama Department of Corrections,
And GRANTT CULLIVER, Warden,
Holman Correctional Facility**

Defendants.

No. 2:06-cv-00695-WKW-SRW

**DEFENDANTS' MOTION TO JOIN
ADDITIONAL DEFENDANT-IN-COUNTERCLAIM**

Defendants / Counter-plaintiffs, Richard Allen, in his official capacity as Commissioner of the Alabama Department of Corrections, and Grantt Culliver, in his official capacity as Warden of the Holman Correctional Facility, who have filed a counter-claim against plaintiff Willie McNair, respectfully move pursuant to Rules 13(h), 19, and 20 of the Federal Rules of Civil Procedure, to join James Harvey Callahan as an additional defendant-in-counter claim. In support of this Motion, Defendants / Counter-plaintiffs state as follows:

1. In their counter-claim, Defendants / Counter-plaintiffs assert claims against Willie McNair ("McNair") and James Harvey Callahan ("Callahan") for declaratory relief related to the confidential protocol administering capital punishment by lethal injection in the State of Alabama.

2. Callahan is an inmate on Alabama's death row. He was convicted of murder and sentenced to death by lethal injection. Both the conviction and sentence were

upheld on appeal.

3. The confidential execution protocol that will be used in each counter-defendant's execution is the same, and is the same that will be used in the execution of other inmates on Alabama's death row. Therefore, with respect to the claims against McNair and Callahan, there are common questions of law and fact concerning the constitutionality of the protocol.

4. As a death row inmate, Callahan claims an interest in an action concerning the constitutionality of Alabama's execution protocol. Disposition of the matter in his absence may as a practical matter impair or impede his ability to protect that interest. In the alternative, should Callahan assert a separate action, the Defendants / Counter-plaintiffs will be subject to a substantial risk of inconsistent obligations.

5. The Counter-plaintiffs adopt and incorporate their Answer and Counter-Claim for Declaratory Judgment as if set forth fully herein.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order requiring or permitting the joinder of James Harvey Callahan as an additional Counter-defendant.

Respectfully submitted,

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BY:

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CERTIFICATE OF SERVICE

This is to certify that on the 29th day of September, 2006, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following:

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